ITA 4/2006
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE SMTI. JUSTICE A. HAZARIKA

I.T.A. NO.4/2006.

Commissioner of Income Tax,
Guwahati-II,
Saikia Commercial Complex,
G.S.Road, Sree Nagar,
Guwahati - 781 005.
&Appellant.

-Versus-

M/s Ganga Bani Mercantile & Finance (P) Ltd,
C/o M/s Hotel Blue Moon,
Bhuban Road, Uzanbazar,
Guwahati - 781 001.
&Respondent.

P R E S E N T

THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE SMT. JUSTICE A. HAZARIKA

For the appellant : Mr U. Bhuyan.
Standing Counsel,
I.T.Department.

For the respondent : Dr AK Saraf,
Mrs K. Jain and
Ms N. Hawelia.

Date of hearing : 16.05.07, 17.05.07,
18.05.07 & 23.05.07.

Date of judgment : 21.8.07

JUDGMENT AND ORDER(CAV)

Biswas, J.

Heard Mr U. Bhuyan, learned Standing Counsel for the Income Tax Department, appearing for the appellant. Also heard Dr AK Saraf, learned senior counsel appearing for the respondent-assessee.

2. This appeal has been filed u/s 260-A of the Income Tax Act, 1961, hereinafter referred to as the 'Act' against the order dated 12.9.2005 passed by the Income Tax Appellate Tribunal (ITAT), Guwahati Bench in I.T.A. No.11(Gau) of 2003 pertaining to assessment made for the block period 1988-89 to 1998-99.

By the aforesaid impugned order, the Appellate Tribunal has accepted the challenge made on behalf of the assessee and has held that as the assessee Company was registered with the Registrar of Companies at Calcutta, the jurisdiction in respect of the assessee Company could lie only with the Income Tax authorities at Calcutta. Since no order u/s 127 of the Act has been passed by the Income Tax authorities at Calcutta transferring the case to Guwahati it is held that neither the assessing officer nor the Commissioner of Income Tax (Appeals-2), Guwahati would have jurisdiction in respect of the assessee. Accordingly, it is held that a notice u/s 158BD of the Act issued by the assessing officer at Guwahati completely lacks jurisdiction.

On the basis of such finding regarding the lack of jurisdiction, the Appellate Tribunal by the impugned order has quashed the assessment order passed as void-ab-initio for want of jurisdiction and on the same reasoning, the first appellate order of the CIT(Appeals-2) was also set aside. The Appellate Tribunal did not go into the other issues raised, as the issue on the jurisdiction, was answered in favour of the assessee.

3. Before examining the legality of the impugned decision of the Appellate Tribunal, the salient facts may be noticed. There was a search in Gogoi Group of Companies on 20-11-1997 u/s 132 of I.T. Act, 1961 resulting in seizure of substantial number of Pass Books, Cheque Books and other documents relating to a large number of Bank Accounts, investments in different names, organizations and financial institutions. On the basis of the statement on oath of Shri J.K.Gogoi that some of the investments were made by the assessee in support of which he filed confirmatory letter (copy of audited a/c dt. 24.08.98), the Assessing Officer at Guwahati issued a notice u/s 158BD dt. 22.11.99 and served the same on the assessee company requesting them to file return for the Block Period. The assessee company filed the return of Income for the Block Period ofn 06.12.99 showing NIL as undisclosed income. Audited Balance Sheet, P & L A/c for the year ended 31.03.98 was also enclosed therewith. Accordingly, notices u/s 143(2) & 142(1) were issued and served on the assessee. A detailed questionnaire dt. 30.05.2000 was also served. In response to which Shri P. Kr Agarwal and Shri Rupak Kr Gogoi appeared but neither any explanation nor any details were furnished. Accordingly, the A.O. passed the impugned order, after hearing Shri Pawan Kr Agarwal, Accountant, A/R considering the written submission filed by him with reference to the questionnaire dt. 30.05.2000 computing total undisclosed income for the block period at Rs.1,40,17,200/-.

On receipt of the notice u/s 158BD of the Act, the assessee addressed an explanation regarding source of funds in their communication dated 8.6.2000 addressed to the Additional Commissioner of Income Tax Assessment, Special Range-I, Guwahati. In the said response dated 8.6.2000, the assessee had contended as under:

To 8.6.2000
The Additional Commissioner of Income Tax,
Assessment, Special Range-1, Guwahati.

Sub:- Explanation regarding Sources of Funds.
Ref:- (i) Your Notice G-9/JCIT(A)/SR-I/GHY/360 & 361 DT.

30.05.2000.
(ii) GIR No.G-9/JCIT/SR-II.

Sir,

With reference to above it respectfully submitted :-

1. That Sir, in response to your notice U/s 158BD, we had submitted return in Form No.2B under protest on 6.12.1999. The notice & proceedings U/s 158BD is invalid & without jurisdiction on the facts of the case.

2. That Sir, as will be clear from the Audited Balance Sheet furnished, the only source of funds are Share Holders Funds. The detailed list of the same is enclosed herewith.

3. That Sir, the Share holders funds are also reflected in the Balance Sheet, audited prior to the date of search, which means these transactions were duly recorded prior to date of search. However no return U/s 139 was filed because income did not exceed maximum amount which is not chargeable to tax. On these facts it can never be said that these have not been or would not have been disclosed for the purpose of Income Tax Act. As such the same is out of definition of Undisclosed Income under section 158B(b) of the Income Tax Act.

4. That Sir, in this connection reliance is also placed on CIT Vs Steller Investment Ltd (Delhi) (1991) 192 ITR 287.

Hope your honour will find the above explanation up to your satisfaction. Your humble petitioner is ready to furnish such further details/explanation as may be called for. .

4. The Assessing Officer considered the challenge made by the assessee on the validity of the proceeding initiated u/s 158BD of the Act and found that no cogent evidence and reasons have been put forward to show how the assessee Company could be outside the jurisdiction of the assessing officer at Guwahati. Accordingly, the Assessing Officer was not inclined to accept the claim regarding lack of jurisdiction and proceeded to assess the Company. The Assistant Commissioner of Income Tax, Circle-IV, Guwahati held that the assessee Company failed to explain its source of investment amounting to Rs.1,26,75,554/- and assessed the Company for income tax amounting to Rs.1,40,17,200/- u/s 158(B)(D) of the Act.

5. Being aggrieved, the assessee filed an appeal being Guwa-172/2001-2002 before the Commissioner of Income Tax(Appeals - 2) where, apart from other issues, the jurisdiction issue was also raised by the assessee. The CIT(Appeals - 2) sought the comments of the Assessing Officer on the issues raised by the assessee. The Assessing Officer indicated that the assessee had carried out all its activities at Guwahati and had received the notices and had complied with the notices also at Guwahati and just because the address at Calcutta is shown by the assessee, they cannot escape from the burden of income tax by raising the issue of jurisdiction. It was further submitted that there is no dispute so far as jurisdiction of the assessing officer is concerned and accordingly, there is no question for referring the issue to the higher authorities u/s 124(2) of the Act.

6. The CIT (Appeals - 2) found that the protest made by the assessee through their communication dated 8.6.2000 (extracted as above) was a general one and no specific reason was cited, indicating why the Assessing Officer at Guwahati lacked jurisdiction. The appellate authority also found that the said objection was vague and not specific. The comments of the Assessing Officer were also noted and the appellate authority found that the entire business operation of the assessee Company is conducted within Guwahati jurisdiction and the heads, brains and the management of the Company are entirely within Assam. It was further found that the assessee, although had their registered office at Calcutta, had never filed any return nor was ever assessed by the Income Tax authorities at Calcutta.

Accordingly, it was held that the Assessing Officer at Guwahati had exer

cised his jurisdiction correctly u/s 158(B)(D) of the Act and since it found tha t there is no other material, other than the Calcutta address, to indicate that the assessee Company carried on any business within the jurisdiction of the inco me tax authorities at Calcutta.

On the basis of the aforesaid finding, the proceeding initiated by the A ssessing Officer at Guwahati was held to be invalid and the jurisdictional quest ion was answered in favour of the Revenue by the appellate order dated 10.12.200 2.

7. Being aggrieved, the assessee preferred a Second Appeal before the Incom e Tax Appellate Tribunal, Guwahati and the same was taken up as ITA No.11(Gau)/2 003. The Appellate Tribunal examined the issue regarding the jurisdiction of the assessing authorities at Guwahati to issue the notices u/s 158BD of the Act. Th e Appellate Tribunal found that the assessee Company is registered with the Regi strar of Companies in West Bengal and on this sole basis, held that the jurisdic tion of the case could only be with the Chief Commissioner of Income Tax, Calcut ta and accordingly, the assessing authority as well as the appellate authority a t Guwahati could have no jurisdiction to proceed against the assessee u/s 158BD of the Act.

The Appellate Tribunal also considered the address shown as 71, Matalf S treet, Calcutta - 700 069 as the address of the assessee while issuing notice u/ s 158BD of the Act, to be a non-curable mistake and on the basis of such conclus ion, declared the proceeding initiated by the assessing officer at Guwahati to b e void-ab-initio.

On the basis of the aforesaid finding of total lack of jurisdiction of t he income tax authorities at Guwahati, the assessment order was quashed as void- ab-initio for want of jurisdiction and consequently, the appellate order passed by the CIT(A) was also set aside. In view of such finding against the Revenue, t he other issues were not discussed by the Appellate Tribunal.

8. In order to decide on the validity of the finding regarding lack of juri sdiction of the authorities at Guwahati, it would be necessary to take note of t he objection regarding absence of jurisdiction taken by the assessee through the ir letter dated 8.6.2000. It is apparent that the objection taken was not a spec ific one and was in very general terms by stating that the notice & proceedings u/s 158BD is invalid & without jurisdiction on the facts of the case. .

The objection as to the jurisdiction of the Assessing Officer was obviou sly general in nature as is evident from the letter dated 8.6.2000. But it would appear that the representative of the assessee argued the question of jurisdict ion before the Assessing Officer and the Assessing Officer deliberated upon the question and eventually, proceeded to assess the tax liability of the assessee r ejecting the plea of lack of jurisdiction. Therefore, the question of lack of ju risdiction was very much an issue before the Assessing Officer.

9. Section 124 of the Act provides for jurisdiction of the assessing office r. In sub-clause (a) under Sub-Section (a) of Section 124(1), it is provided tha t jurisdiction would be determined by looking at the principal place of busine ss or profession. An Assessing Officer will assume jurisdiction over any person if the place where he carries on his business or profession is situate within th e area. If the business or profession of a person is carried on more places than one, the Assessing Officer having jurisdiction over the principal place of busi ness or profession will have jurisdiction to assess the tax liability of such pe rson. The learned Tribunal disposed of the appeal setting aside the findings of the Assessing Officer as well as the first appellate authority merely because th e registered office of the assessee is located at Calcutta. This by itself would not be conclusive. The learned Tribunal ought to have recorded a clear finding

on facts before coming to the aforesaid conclusion. We have perused the documents filed by the Revenue along with the memo of appeal. The assessee filed a remand note submitted by the Assessing Officer. From all these documents it is not discernible as to whether the assessee carries on his business in more places than one and therefore, we are not in a position to determine conclusively the question raised in this appeal.

10. In our view, the reasons cited by the Appellate Tribunal in declaring that the authorities at Guwahati would have no jurisdiction is not correct as the location of the registered office of the assessee Company could be of no consequence, without any other relevant material, to decide on the principal place of business of the assessee Company. If the assessee Company does not carry out any business activities within the jurisdiction of the income tax authorities at Calcutta and instead conducts all its business under the jurisdiction of the income tax authorities at Guwahati, the principal place of business of the assessee Company could very well be at Guwahati.

11. There is no doubt that when an objection regarding lack of jurisdiction of an Assessing Officer is raised, the Assessing Officer ought to have made a reference to the higher authorities for a decision as provided in Section 124(2) of the Act. In the instant case, though the objection raised was not specific, yet the Assessing Officer considered the same and proceeded to deal with the matter himself. As mentioned hereinbefore, in the given situation, it may not be correct to take a view that an adjudicable jurisdictional issue was not involved in the instant case. Therefore, recourse to the provision of Section 124(2) of the Act would have been the only course left with the Assessing Officer.

12. At this belated stage we do not think it appropriate to refer back the matter to the Assessing Officer for making a reference u/s 124(2) of the Income Tax Act. In our considered opinion, it would be best to refer the matter back to the learned Tribunal to decide the issue after due consideration of the materials on record in reversal of its impugned judgment.

13. We, therefore allow this appeal, set aside the impugned judgment and remit the matter back to the learned Tribunal to re-examine the issue of jurisdiction in the light of the discussion made hereinbefore on the basis of the materials available on record and to record its finding thereon. No costs.